Reserved Judgment

IN THE HIGH COURTR OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 649 of 2001
(Old No. 737 of 1997)

Sohanbir S/o Preetam Singh
R/o Chutmalpur, P.S. Fatehpur,
District Saharanpur.

…… Appellant

Versus

The State …… Respondent

Mr. Pawan Kumar, learned counsel for the appellant.
Mr. G.S. Sandhu, A.G.A. for the respondent State.

Hon' ble Prafulla C. Pant, J.

This criminal appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr. P.C.), is directed against the judgment and order dated 15th April, 1997, passed by learned Additional Sessions Judge, Roorkee, in Sessions Trial No. 377 of 1993, whereby appellants Sohanbir has been convicted under Section 366-A of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.) and sentenced to rigorous imprisonment for five years and also to pay fine of Rs. 1,000/-, in default of payment of which, he is directed to under rigorous imprisonment for a further period of six months.

2) Heard learned counsel for the parties and perused the entire record.

3) Prosecution story, in brief, is that on 8th November, 1991, at about noon, appellant Sohanbir came in the house of P.W. 1 Kiran Singh, resident of P.S. Gadar Judda, Police Station Manglore, and abducted his daughter Suman. It is alleged by the prosecution that the incident was seen by witnesses P.W. 2 Ajab Singh and P.W. 4 Nepal Singh. According to the prosecution, used to come to the house of Kiran Singh, frequently. When on the day of incident, in the noon, the complainant Kiran Singh P.W. 1, returned back to his home he was told by his son that Suman has been abducted. It is further alleged that Kiran Singh, father of the victim, went to the station to lodge the First Information Report, but the police asked him to search for the girl and lodge the First Information Report thereafter. According to the prosecution, accused Sohanbir is a driver of Truck registration No. U.R.M. / 2317. On 09.08.1992, at about 6:30 P.M., accused was seen near the village along with his Truck and there a had been “MAARPEET’ (scuffle) between the complainant and the accused and accused suffered head injury, which according to the complainant, was caused by getting dashed with the window of the Truck. It appears that the accused Sohanbir lodged First Information Report against present complainant Kiran Singh relating to offences punishable under Section 307, 504 of I.P.C. with the police station. Later on, complainant Kiran Singh also lodged First Information Report (Ext. A –1) with the police against accused Sohanbir relating to offences punishable under Section 363, 366 of I.P.C. It appears that both the crimes were separately investigated by the police. In the present

Case the crime is registered as case crime number 293 of 1992. On completion of the investigation, a charge sheet (Ext. A –5) against the accused Sohanbir was filed.

4) On receipt of the charge sheet, it appears that the Magistrate concerned, after giving necessary copies to the accused, as required under Section 207 of the Cr.P.C., committed the case to the court of Sessions, for trial. Learned Additional Sessions Judge, after hearing the prosecution and the defence framed charge of offence punishable under Section 366 of I.P.C., against the accused / appellant Sohanbir, who pleaded not guilty, and claimed to be tried. On this prosecution got examined P.W. 1 Kiran Singh (complainant and father of the girl); P.W. 2 Ajab Singh (eyewitness); P.W. 3 Ram Narain (brother of the victim); P.W. 4 Nepal Singh (another eyewitness) and P.W. 5 Sub Inspector Bhayya Lal (Investigating Officer). All oral and documentary evidence was put to the accused by the trial court under Section 313 of the Cr. P.C., in reply to which accused / appellant alleged that he was falsely implicated in the crime. Accused / appellant has further stated that complainant a had to make payment to him and due to that enmity he was falsely implicated in the crime. No evidence in defence appears to have been adduced on behalf of the accused. After hearing the parties, the trial court found the accused / appellant Sohanbir guilty of the offence punishable under Section 366-A of I.P.C., and after hearing him on sentence, sentenced him to rigorous imprisonment for five years and also to pay fine of Rs. 1,000/-, in default of payment of which, the convict was directed to undergo rigorous imprisonment for a further

period of six months. Aggrieved by said judgment and order, the convict preferred this appeal before Allahabad High Court in the year 1997, from where the same is received by this Court by way of transfer, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) The first argument advanced on behalf of the appellant is that the First Information Report was highly belated and the same is lodged without sufficient explanation. On examination of the evidence on record, I found that there is substance in the argument made by learned counsel of the appellant. The incident is said to have occurred on 08.11.1991, at about noon. Almost after ten months, the First Information Report appears to have been lodged, on 4th September, 1993, at about 11:35 A.M. The explanation given by the prosecution for such a long delay of more than nine and a half months is that when the complainant. P.W. 1 Kiran Singh went to the police station to lodge the First Information Report, he was asked to search his daughter First and then to lodge the report. This explanation could have been said sufficient for a delay of couple of days in lodging the First Information Report. But, it is not a case of delay of couple of days in lodging the First Information Report, rather, there is long delay of more than nine and a half months, in lodging the report, for which the above explanation cannot be said to be sufficient. This long delay itself creates reasonable doubt in the prosecution story as to the manner in which the incident is said to have been taken place, by the prosecution.

6) Mr. Pawan Kumar, learned counsel for the appellant further argued that the First Information Report (Ext. A –1) was lodged after the First Information Report lodged by the accused / appellant in August 1992, against the complainant for allegedly committing attempt to murder of the accused / appellant. This fact is not denied by the prosecution. It is also not disputed that in respect of offence punishable under Section 307 of I.P.C. a charge sheet was submitted by the police, against the present complainant and he stood trial in connection with the same, as is clear from the statement of P.W. 3 Ram Narain. As such, the enmity due to which the present report was lodged cannot be ruled out.

7) It is also submitted on behalf of the appellant, that for constituting offence punishable under Section 366-A of I.P.C. it is necessary that the girl abducted must be a minor. In this connection, it is further submitted that according to the statement of P.W. 3 Ram Narain, brother of the victim, she was literate and had completed her studies upto Class VII. That being so, the prosecution should have produced the school leaving certificate to show, that the girl was minor. Said document was vital in the circumstances, particularly, when it was put in the cross examination by the accused / appellant to the witnesses that the girl was major.

8) From the above discussion of evidence, and the reasons mentioned above, this Court is of the view that the prosecution has failed to prove the charge beyond

Reasonable doubt against the accused / appellant Sohanbir, that he kidnapped or abducted Suman, daughter of the complainant. In the circumstances, the appellant is entitled to the benefit of reasonable doubt. Accordingly, the appeal deserves to be allowed. The same is allowed. The impugned judgment and order dated 15.04.1997, convicting ans sentencing the accused/ appellant under Section 366-A of I.P.C., is hereby set aside. He is acquitted of the charge framed against him. He is on bail. He need not to surrender. His bail bonds are cancelled and sureties are discharged. (Non-bailable warrants issued earlier by this against appellant Sohanbir also stands recalled).

(Prafulla C. Pant, J.)

Dt. October 18, 2006,
H. Negi